

REMARKS

Status of the Claims:

Claims 12 and 21 have been amended. Claims 38-42 have been added. After amending the claims as set forth above, claims 12-14, 16-18, 20-23, 25-27, 29, and 36-42 are now pending in this application.

Claim Rejection – 35 U.S.C. § 102 – Ellis I

Claims 12-14, 16, 17, 21-23, 25, and 26 have been rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ellis et al. (U.S. Pat. No. 7,065,709) (Ellis I). These rejections are respectfully traversed in view of the claims as amended herein.

Independent claim 12, as amended recites a method for creating a viewer profile used for determining programming events of interest to a viewer, comprising: receiving user navigation commands for navigation among predefined subject matter categories, wherein the subject matter represented by each of said predefined categories is defined such that the predefined categories together form a hierarchy comprising at least a set of top-level categories, respective sets of first level sub-categories each corresponding to and encompassed by a top level category, and respective sets of second level sub-categories each corresponding to and encompassed by a first level sub-category; wherein said navigation is performed in accordance with said hierarchy; wherein the categories and the sub-categories is distinct from the programming events; and wherein each of the respective sets of second level sub-categories are distinct from one another; receiving input from the user indicating that a predefined category of the hierarchy to which the user has navigated using said navigation commands is to be added to or deleted from a viewer profile that represents subject matter of interest to the viewer; receiving qualified keyword input from the user associating a keyword supplied by the user with a specific category of the category hierarchy to indicate that the keyword describes subject matter of interest to the viewer only when that subject matter is also described by the category associated with the qualified keyword; and storing data representing a plurality of categories indicated by the user as representing

subject matter of interest to the viewer and qualified keywords specified by the user in the viewer profile in a computer readable medium. Similar features are found in independent claim 21.

Claim 12 is neither taught, suggested, nor rendered predictable by the Ellis I reference. In particular, claim 12 recites, among other features, wherein the subject matter represented by each of said predefined categories is defined such that the predefined categories together form a hierarchy comprising at least a set of top-level categories, respective sets of first level sub-categories each corresponding to and encompassed by a top level category, and respective sets of second level sub-categories each corresponding to and encompassed by a first level sub-category; wherein said navigation is performed in accordance with said hierarchy; and wherein each of the respective sets of second level sub-categories is distinct from one another. The Ellis I reference does **not** disclose or suggest these features and therefore.

According to the Examiner, the Ellis I reference discloses top level categories (e.g., “Series” or “Genre”), first level sub-categories (e.g., “Frasier” or “Friends”), and second level sub-categories (e.g., “Strong Like” or “Weak Like”). *See* p. 3 l. 19 to p. 4 l. 6 of Office Action dated May 14, 2008 (*Office Action*) (citing Figs. 13a-13b of the Ellis I reference). However, as stated above, amended claim 12 further recites that each of the respective sets of second level sub-categories is distinct from one another. As shown, for example in, but not limited to, Fig. 8 of the pending application, respective sets of second level sub-categories (encompassed by the first level sub-category: “Football”) distinct from one another can include, but is not limited to, “NFL,” “College,” “Arena,” and “Other.” Similarly, another set of second level sub-categories (e.g., encompassed by the first level sub-category: “Hockey”), may include, but is not limited to, for example, “NHL”¹, “College,” and/or “Other.” Thus, the second level sub-categories for “Football” and the second level sub-categories for “Hockey” are **distinct** at least with respect to “NFL” and “NHL.”

¹ Although the second level sub-categories for “Hockey” are not shown in Fig. 8, one skilled in the art would know that each first level sub-category, such as “Hockey,” “Baseball,” and “Basketball,” may at least include the professional league for that respective sport, for example “NHL,” “MLB,” and “NBA,” respectively, just as “NFL” is listed as one of the second level sub-categories for the first level sub-category “Football.”

In contrast to amended claim 1, the Ellis I reference **does not** disclose respective sets of second level sub-categories that are **distinct** from one another. For example, in Fig. 13a of the Ellis I reference, as argued by the Examiner, the second level sub-categories can range from “Strong Dislike,” “Weak Dislike,” “Weak Like,” and “Strong Like.” However, these four second level sub-categories are the same sub-categories regardless of the chosen first level sub-category. For instance, whether the first level sub-category is “Frasier” (*see* Fig. 13a of the Ellis I reference), “Friends” (*see* Fig. 13a), “Baseball” (*see* Fig. 13b), “Discovery Channel” (*see* Fig. 13c), or “Arnold Schwarzenegger” (*see* Fig. 13d), the second level sub-categories that follow are always the same four sub-categories – specifically: “Strong Dislike,” “Weak Dislike,” “Weak Like,” and “Strong Like.” Similarly, in Fig. 13e of the Ellis I reference, whether the first level sub-category is “R Rating,” “TV-MA Rating,” or “NC-17 Rating” the second level sub-categories that follow are the same – in this case “illegal” or “legal.” – and thus are **not distinct** from each other. Accordingly, the Ellis I reference does not disclose that each of the respective sets of second level sub-categories is distinct from one another. As such, the Ellis I reference does **not** anticipate claim 12.

For at least the reasons above, the Ellis I reference does not anticipate, suggest, or render predictable independent claims 12 and 21. Claims 12-14, 16, and 17 depend from claim 12 (directly or indirectly) and are believed to be allowable for at least the same reasons as claim 12 is believed to be allowable. Claims 21-23, 25, and 26 depend from claim 21 (directly or indirectly) and are believed to be allowable for at least the same reasons as claim 21 is believed to be allowable. The rejections of claims 12-14, 16, 17, 21-23, 25, and 26, as amended herein, are respectfully traversed.

Claim Rejection – 35 U.S.C. § 103 – Ellis I and Ellis II

Claims 20 and 29 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis I and Ellis et al. (U.S. Pat. App. Pub. No. 2005/0251827) (Ellis II). These rejections are respectfully traversed in view of the claims as amended herein.

Claims 20 and 29 are believed to be allowable at least for the reasons discussed with respect to independent claims 12 and 21. Specifically, as discussed above, the Ellis I reference does not disclose that each of the respective sets of second level sub-categories is distinct from one another. According to the Examiner, the Ellis II reference discloses receiving input from a user specifying times of the day for when to use the viewer profile, but makes no reference to the respective sets of second level sub-categories being distinct from one another. To establish a prima facie obviousness of a claim invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because neither the Ellis I reference nor the Ellis II reference disclose or suggest the recited feature, there can be no prima facie obviousness by seeking to combine these references. Thus, claims 20 and 29 are believed to be allowable. Accordingly, the rejections of claims 20 and 29, as amended herein, are respectfully traversed.

Claim Rejection – 35 U.S.C. § 103 – Ellis I, Ellis II, and Knudson

Claims 18 and 27 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis I in view of Ellis II in further view of Knudson et al. (U.S. Pat. App. Pub. No. 2005/0204387) (Knudson). These rejections are respectfully traversed in view of the claims as amended herein.

Claims 18 and 27 are believed to be allowable at least for the reasons discussed with respect to independent claims 12 and 21. Specifically, as discussed above, neither the Ellis I reference nor the Ellis II reference discloses that each of the respective sets of second level sub-categories are distinct from one another. According to the Examiner, the Knudson reference is merely directed to setting alerts for notifying a user; the Knudson reference, however, makes no reference to the respective sets of second level sub-categories being distinct from one another. To establish a prima facie obviousness of a claim invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Because neither the Ellis I reference, the Ellis II reference, nor the Knudson reference disclose or suggest the recited feature, there can be no prima facie obviousness by seeking to combine these references.

Thus, claims 18 and 27 are believed to be allowable. Accordingly, the rejections of claims 18 and 27, as amended herein, are respectfully traversed.

New Claims:

New claims 38-42 are added to further protect additional features of the present invention.

Claim 38 generally recites, among other features, wherein each of the respective sets of second level sub-categories differ in at least one second level sub-category. This claim is supported by the original application, for example, at paragraphs [0073] and [0074] and Fig. 8, which describe a plurality of second level sub-categories (encompassed by the first level sub-category: "Football"), such as, but not limited to, "NFL," "College," "Arena," and "Other," which is different from a plurality of second level sub-categories (encompassed by another first level sub-category: "Hockey"), which may include, for example, "NFL," "College," and/or "Other." Thus, "Football" and "Hockey" would at least differ with respect to "NFL" and "NHL" respectively. This claim is further distinguished from the cited references in that those references do not disclose wherein each of the respective sets of second level sub-categories differ in at least one second level sub-category. For example, as discussed above, the four second level sub-categories of the Ellis I reference are always the same four second level sub-categories (i.e., "Strong Dislike," "Weak Dislike," "Weak Like," and "Strong Like) and thus would be the same four whether "Football" or "Hockey" was selected. Moreover, this claim is believed to be allowable at least for the reasons of its parent claim.

Claim 39 generally recites, among other features, wherein the hierarchy further comprises respective sets of third level sub-categories each corresponding to and encompassed by a second level sub-category. This claim is supported by the original application, for example, at paragraphs [0073] and [0074] and Fig. 8, which describe a third level subcategory. This claim is further distinguished from the cited references in that those references do not disclose the hierarchy further comprises respective sets of third level sub-categories each corresponding to

and encompassed by a second level sub-category. For example, in the Ellis I reference, there are no options for selecting a further subcategory beyond those illustrated in Figs. 13a-13f. At most, the Ellis I reference allows the selection of a second level sub-category. Moreover, this claim is believed to be allowable at least for the reasons of its parent claim.

Claim 40 generally recites, among other features, wherein the hierarchy further comprises respective sets of final level sub-categories each corresponding to and encompassed by a previous level sub-category; and wherein each of the respective sets of final level sub-categories are distinct from one another. This claim is supported by the original application, for example, at paragraphs [0073] and [0074] and Fig. 8, which describe a plurality of final level sub-categories (encompassed by a previous level sub-category: e.g., “AFC”), such as, but not limited to, “Buffalo Bills,” “NY Jets,” and “Miami Dolphins” which is different from a plurality of final level sub-categories (encompassed by another sub-category within the previous sub-category: e.g., “NFC”), which may include, for example, teams in the NFC conference, such as the “Washington Redskins,” “NY Giants,” and “Dallas Cowboys.” Thus, “AFC” and “NFC” would at least differ with respect to the teams presented within each conference or in other words, the final level sub-categories of “AFC” and “NFC” would be distinct from one another. This claim is further distinguished from the cited references in that those references do not disclose that the hierarchy further comprises respective sets of final level sub-categories each corresponding to and encompassed by a previous level sub-category; and wherein each of the respective sets of final level sub-categories are distinct from one another. For example, as discussed above, the four second level sub-categories of the Ellis I reference are always the same four (i.e., “Strong Dislike,” “Weak Dislike,” “Weak Like,” and “Strong Like”) and thus would be the same four second level sub-categories whether “AFC” or “NFC” was selected. Moreover, this claim is believed to be allowable at least for the reasons of its parent claim.

Claim 41 generally recites, among other features, wherein the respective sets of final level sub-categories are the second level sub-categories; and wherein the previous sub-category is the first level sub-category. This claim is supported by the original application, for example, at

paragraphs [0073] and [0074] and Fig. 8, as discussed above. Moreover, this claim is believed to be allowable at least for the reasons of its parent claim.

Claim 42 generally recites, among other features, wherein one of the top-level categories comprises sports; wherein one of the first level sub-categories corresponding to and encompassed by the top level category is football; and wherein one of the second level sub-categories corresponding to and encompassed by the first level sub-category is NFL. This claim is supported by the original application, for example, at paragraphs [0073] and [0074] and Fig. 8, which describe “Sports” as the top level category, “Football” as a first level sub-category, and “NFL” as a second level sub-category. This claim is further distinguished from the cited references in that those references do not disclose wherein one of the top-level categories comprises sports; wherein one of the first level sub-categories corresponding to and encompassed by the top level category is football; and wherein one of the second level sub-categories corresponding to and encompassed by the first level sub-category is NFL. Moreover, this claim is believed to be allowable at least for the reasons of its parent claim.

Conclusion:

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of

papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

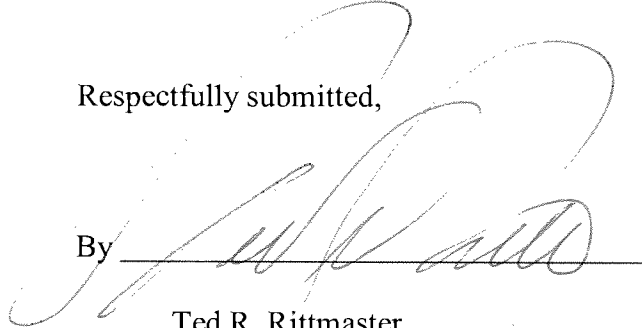
Date

9/15/08

FOLEY & LARDNER LLP
Customer Number: 23392
Telephone: (213) 972-4594
Facsimile: (213) 486-0065

Respectfully submitted,

By

A large, stylized handwritten signature in dark ink, likely belonging to Ted R. Rittmaster, is written over a horizontal line.

Ted R. Rittmaster
Attorney for Applicant
Registration No. 32,933